

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1280

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO GOVERNMENT ORGANIZATION; CREATING THE WORKFORCE
SOLUTIONS DEPARTMENT; PROVIDING POWERS AND DUTIES; PROVIDING
FOR TRANSFERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE
NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 14 of this act may be cited as the "Workforce Solutions
Department Act".

Section 2. [NEW MATERIAL] PURPOSE.--The purpose of the
Workforce Solutions Department Act is to establish a single,
unified department to administer all laws and exercise all
functions formerly administered and exercised by the labor
department and the office of workforce development.

Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
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1 Workforce Solutions Department Act:

2 A. "department" means the workforce solutions
3 department; and

4 B. "secretary" means the secretary of workforce
5 solutions.

6 Section 4. [NEW MATERIAL] WORKFORCE SOLUTIONS DEPARTMENT
7 CREATED.--The "workforce solutions department" is created in
8 the executive branch pursuant to the Executive Reorganization
9 Act. The department is a cabinet department that includes:

10 A. the office of the secretary;

11 B. the administrative services division;

12 C. the business services division;

13 D. the labor relations division;

14 E. the workforce technology division; and

15 F. the workforce transition services division.

16 Section 5. [NEW MATERIAL] SECRETARY OF WORKFORCE
17 SOLUTIONS--APPOINTMENT.--

18 A. The chief executive and administrative officer
19 of the department is the "secretary of workforce solutions".
20 The secretary shall be appointed by the governor with the
21 consent of the senate. The secretary shall hold office at the
22 pleasure of the governor and shall serve in the executive
23 cabinet.

24 B. A secretary who has been appointed but not yet
25 confirmed shall serve and have all the duties, responsibilities

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1 and authority assigned by law to that office during the period
2 of time prior to the final action by the senate to confirm or
3 reject the appointment.

4 Section 6. [NEW MATERIAL] SECRETARY--GENERAL POWERS AND
5 DUTIES.--

6 A. The secretary is responsible to the governor for
7 the operation of the department. It is the secretary's duty to
8 manage all operations of the department and to administer and
9 enforce the laws with which the secretary or the department is
10 charged.

11 B. To perform the secretary's duties, the secretary
12 has every power expressly enumerated in the laws whether
13 granted to the secretary or the department or any division of
14 the department, except where authority conferred upon the human
15 rights commission is explicitly granted by Section 28-1-4 NMSA
16 1978 and except where authority conferred upon any division
17 therein is explicitly exempted from the secretary's authority
18 by statute. In accordance with these provisions, the secretary
19 shall:

20 (1) except as otherwise provided in the
21 Workforce Solutions Department Act, exercise general
22 supervisory and appointing authority over all department
23 employees, subject to any applicable personnel laws and
24 regulations;

25 (2) delegate authority to subordinates as the

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1 secretary deems necessary and appropriate, clearly delineating
2 such delegated authority and the limitations thereto;

3 (3) organize the department into those
4 organizational units the secretary deems will enable it to
5 function most efficiently, subject to any provisions of law
6 requiring or establishing specific organizational units;

7 (4) within the limitations of available
8 appropriations and applicable laws, employ and fix the
9 compensation of those persons necessary to discharge the
10 secretary's duties;

11 (5) take administrative action by issuing
12 orders and instructions, not inconsistent with the law, to
13 ensure implementation of and compliance with the provisions of
14 law with the administration or execution of which the secretary
15 is responsible, and to enforce those orders and instructions by
16 appropriate administrative action or actions in the court;

17 (6) conduct research and studies that will
18 improve the operation of the department;

19 (7) provide courses of instruction and
20 practical training for employees of the department and other
21 persons involved in the administration of programs with the
22 objective of improving the operations and efficiency of
23 administration;

24 (8) prepare an annual budget of the
25 department;

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1 (9) provide cooperation, at the request of
2 heads of administratively attached agencies, in order to:

3 (a) minimize or eliminate duplication of
4 services and jurisdictional conflicts;

5 (b) coordinate activities and resolve
6 problems of mutual concern; and

7 (c) resolve by agreement the manner and
8 extent to which the department shall provide budgeting, record
9 keeping and related clerical assistance to administratively
10 attached agencies, if any; and

11 (10) within budgetary limits, appoint such
12 staff as required to carry out the duties of the secretary or
13 the department.

14 C. The secretary may apply for and receive, with
15 the governor's approval, in the name of the department, any
16 public or private funds, including United States government
17 funds, available to the department to carry out its programs,
18 duties or services.

19 D. Where functions of departments overlap or a
20 function assigned to one department could better be performed
21 by another department, the secretary may recommend appropriate
22 legislation to the next session of the legislature for its
23 approval.

24 E. The secretary may make and adopt such reasonable
25 and procedural rules as may be necessary to carry out the

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1 duties of the department and its divisions. No rule
2 promulgated by the director of any division in carrying out the
3 functions and duties of the division shall be effective until
4 approved by the secretary unless otherwise provided by statute.
5 Unless otherwise provided by statute, no rule affecting any
6 person or agency outside the department shall be adopted,
7 amended or repealed without a public hearing on the proposed
8 action before the secretary or a hearing officer designated by
9 the secretary. The public hearing shall be held in Santa Fe
10 unless otherwise permitted by statute. Notice of the subject
11 matter of the rule, the action proposed to be taken, the time
12 and place of the hearing, the manner in which interested
13 persons may present their views and the method by which copies
14 of the proposed rule, proposed amendment or repeal of an
15 existing rule may be obtained shall be published once at least
16 thirty days prior to the hearing date in a newspaper of general
17 circulation in the state and mailed at least thirty days prior
18 to the hearing date to all persons who have made a written
19 request for advance notice of hearing. All rules shall be
20 filed in accordance with the State Rules Act.

21 Section 7. [NEW MATERIAL] ADMINISTRATIVELY ATTACHED
22 AGENCIES.--The following are administratively attached to the
23 department:

- 24 A. the human rights commission;
- 25 B. the labor and industrial commission; and

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1 C. the state workforce development board.

2 Section 8. [NEW MATERIAL] DIVISION DIRECTORS.--The
 3 secretary shall appoint, with the approval of the governor,
 4 directors of such divisions as are established within the
 5 department. The positions so appointed are exempt from the
 6 Personnel Act.

7 Section 9. [NEW MATERIAL] BUREAU--CHIEFS.--The secretary
 8 shall establish within each division such bureaus as the
 9 secretary deems necessary to carry out the provisions of the
 10 Workforce Solutions Department Act. The secretary shall employ
 11 a chief to be administrative head of each bureau.

12 Section 10. [NEW MATERIAL] PERSONNEL ACT COVERAGE.--All
 13 employees and positions in the department, except for the
 14 positions of secretary and division directors and other
 15 positions expressly permitted to be exempt by the Personnel
 16 Act, shall be covered by and shall be subject to the provisions
 17 of the Personnel Act. The secretary is the appointing
 18 authority.

19 Section 11. [NEW MATERIAL] COOPERATION WITH FEDERAL
 20 GOVERNMENT--AUTHORITY OF SECRETARY--SINGLE STATE AGENCY
 21 STATUS.--

22 A. The department is authorized to cooperate with
 23 the federal government in the administration of employment,
 24 training and public assistance programs under the jurisdiction
 25 of the department in which financial or other participation by

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1 the federal government is authorized or mandated under federal
2 laws, regulations, rules or orders. The secretary may enter
3 into agreements with agencies of the federal government to
4 implement employment, training and public assistance programs
5 subject to availability of appropriated state funds and any
6 provisions of state laws applicable to such agreements or
7 participation by the state.

8 B. The governor or the secretary may designate the
9 department or any organizational unit of the department as the
10 single state agency for the administration of any employment,
11 training or public assistance program, either by the governor's
12 or the secretary's own discretion or when such designation is a
13 condition of federal financial or other participation in the
14 program under applicable federal law, regulation, rule or
15 order. No designation of a single state agency under the
16 authority granted in this section shall be made in
17 contravention of state law.

18 Section 12. [NEW MATERIAL] ADVISORY COMMITTEES.--The
19 secretary, with the consent of the governor, may create
20 advisory committees in accordance with the provisions of
21 Section 9-1-9 NMSA 1978. The secretary shall appoint the
22 members of advisory committees with the consent of the
23 governor. If the existence of an advisory committee, its
24 representational membership requirements or other matters are
25 required or specified under any federal law, regulation, rule

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1 or order as a condition for receiving federal funds for any
2 program administered by the department, the secretary and the
3 governor shall comply with such requirements in creating the
4 advisory committee.

5 Section 13. [NEW MATERIAL] ORGANIZATIONAL UNITS OF
6 DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO
7 INFORMATION.--Those organizational units of the department and
8 the officers of those units specified by law shall have all the
9 powers and duties enumerated in the specific laws assigned to
10 their organizational units for administration. However, the
11 carrying out of those powers and duties shall be subject to the
12 direction and supervision of the secretary, and the secretary
13 shall retain the final decision-making authority and
14 responsibility in accordance with the provisions of Subsection
15 B of Section 6 of the Workforce Solutions Department Act. The
16 department shall have access to all records, data and
17 information of other departments, agencies and institutions,
18 including its own organizational units not specifically held
19 confidential by law.

20 Section 14. [NEW MATERIAL] DISCLOSURE OF INFORMATION.--To
21 the extent permitted by federal law, upon the written request
22 of a corporation organized pursuant to the Educational
23 Assistance Act, the department shall furnish the last known
24 address and the date of that address of every person certified
25 to the department as being an absent obligor of an educational

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1 debt that is due and owed to the corporation or that the
2 corporation has lawfully contracted to collect. The
3 corporation and its officers and employees shall use such
4 information only for the purpose of enforcing the educational
5 debt obligation of such absent obligors and shall not disclose
6 that information or use it for any other purpose.

7 Section 15. Section 13-4D-1 NMSA 1978 (being Laws 1992,
8 Chapter 74, Section 1) is amended to read:

9 "13-4D-1. SHORT TITLE.--~~[This act]~~ Chapter 13, Article 4D
10 NMSA 1978 may be cited as the "Public Works Apprentice and
11 Training Act"."

12 Section 16. Section 13-4D-3 NMSA 1978 (being Laws 1992,
13 Chapter 74, Section 3) is amended to read:

14 "13-4D-3. DEFINITIONS.--As used in the Public Works
15 Apprentice and Training Act:

16 A. "approved apprentice and training programs"
17 means building trades apprenticeship and training programs in
18 New Mexico that are recognized by the bureau of apprenticeship
19 and training of the United States department of labor or the
20 New Mexico apprenticeship council;

21 B. "compliance statement" means a monthly record of
22 an employer's contributions paid into an approved apprentice
23 and training program in New Mexico or into the public works
24 apprentice and training fund;

25 C. "director" or "division" means ~~[the director of]~~

1 the labor [~~and industrial~~] relations division of the [~~labor~~]
 2 workforce solutions department; and

3 D. "employer" means a contractor, subcontractor or
 4 any person acting as a contractor on a public works project, as
 5 that term is defined in the provisions of the Construction
 6 Industries Licensing Act."

7 Section 17. Section 28-1-2 NMSA 1978 (being Laws 1969,
 8 Chapter 196, Section 2, as amended) is amended to read:

9 "28-1-2. DEFINITIONS.--As used in the Human Rights Act:

10 A. "person" means one or more individuals, a
 11 partnership, association, organization, corporation, joint
 12 venture, legal representative, trustees, receivers or the state
 13 and all of its political subdivisions;

14 B. "employer" means any person employing four or
 15 more persons and any person acting for an employer;

16 C. "commission" means the human rights commission;

17 D. "director" or "bureau" means the [~~director of~~
 18 ~~the~~] human rights bureau of the labor relations division of the
 19 [~~labor~~] workforce solutions department;

20 E. "employee" means any person in the employ of an
 21 employer or an applicant for employment;

22 F. "labor organization" means any organization that
 23 exists for the purpose in whole or in part of collective
 24 bargaining or of dealing with employers concerning grievances,
 25 terms or conditions of employment or of other mutual aid or

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1 protection in connection with employment;

2 G. "employment agency" means any person regularly
3 undertaking with or without compensation to procure
4 opportunities to work or to procure, recruit or refer
5 employees;

6 H. "public accommodation" means any establishment
7 that provides or offers its services, facilities,
8 accommodations or goods to the public, but does not include a
9 bona fide private club or other place or establishment that is
10 by its nature and use distinctly private;

11 I. "housing accommodation" means any building or
12 portion of a building that is constructed or to be constructed,
13 which is used or intended for use as the residence or sleeping
14 place of any individual;

15 J. "real property" means lands, leaseholds or
16 commercial or industrial buildings, whether constructed or to
17 be constructed, offered for sale or rent, and any land rented
18 or leased for the use, parking or storage of house trailers;

19 K. "secretary" means the secretary of [~~labor~~]
20 workforce solutions;

21 L. "unlawful discriminatory practices" means those
22 unlawful practices and acts specified in Section 28-1-7 NMSA
23 1978;

24 M. "physical or mental handicap" means a physical
25 or mental impairment that substantially limits one or more of a

1 person's major life activities. A person is also considered to
2 be physically or mentally handicapped if ~~[he]~~ the person has a
3 record of a physical or mental handicap or is regarded as
4 having a physical or mental handicap;

5 N. "major life activities" means functions such as
6 caring for one's self, performing manual tasks, walking,
7 seeing, hearing, speaking, breathing, learning and working;

8 O. "applicant for employment" means a person
9 applying for a position as an employee;

10 P. "sexual orientation" means heterosexuality,
11 homosexuality or bisexuality, whether actual or perceived; and

12 Q. "gender identity" means a person's
13 self-perception, or perception of that person by another, of
14 the person's identity as a male or female based upon the
15 person's appearance, behavior or physical characteristics that
16 are in accord with or opposed to the person's physical anatomy,
17 chromosomal sex or sex at birth."

18 Section 18. Section 50-14-2 NMSA 1978 (being Laws 1999,
19 Chapter 260, Section 2, as amended) is amended to read:

20 "50-14-2. DEFINITIONS.--As used in the Workforce
21 Development Act:

22 A. "board" means the state workforce development
23 board;

24 B. "chief elected official" means the chief elected
25 executive officer of a unit of general local government in a

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1 local area and in a case in which a local area includes more
2 than one unit of general local government, "chief elected
3 official" means the person designated under the agreement
4 described in Section 117 (c)(1)(B) of the federal Workforce
5 Investment Act of 1998;

6 C. "employment training program" means a program or
7 a part of a program, regardless of which state or local agency
8 administers it, that has as its primary purpose assisting
9 persons in obtaining or enhancing employment;

10 D. "local board" means a local workforce
11 development board; and

12 E. "office" or "division" means the ~~[office of]~~
13 workforce ~~[training and development]~~ transition services
14 division of the workforce solutions department."

15 Section 19. Section 50-14-9 NMSA 1978 (being Laws 2005,
16 Chapter 111, Section 10) is amended to read:

17 "50-14-9. ~~[OFFICE OF WORKFORCE TRAINING AND DEVELOPMENT--~~
18 ~~CREATION--DIRECTOR]~~ WORKFORCE TRANSITION SERVICES DIVISION.--

19 A. The "~~[office of]~~ workforce ~~[training and~~
20 ~~development]~~ transition services division" is created ~~[as an~~
21 ~~agency administratively attached to the office of the governor]~~
22 in the workforce solutions department.

23 B. The ~~[office]~~ division shall be the recipient of
24 all grants from the United States pursuant to the federal
25 Workforce Investment Act of 1998 and shall disburse those

1 grants consistent with that act and the Workforce Development
2 Act.

3 C. The ~~[office]~~ division shall administer the
4 provisions of the Workforce Development Act and is the
5 governor's designee for the state with authority to administer
6 New Mexico's program pursuant to the federal Workforce
7 Investment Act of 1998. In performance of that duty and the
8 duties set forth in Section ~~[11 of this 2005 act]~~ 50-14-10 NMSA
9 1978, the ~~[office]~~ division has the general power to:

10 (1) sue and, subject to the provisions of the
11 Tort Claims Act, be sued;

12 (2) enter into contracts, joint powers
13 agreements and other contracts for workforce development
14 services and administer related programs with other state
15 agencies; local governments; state institutions of higher
16 learning; Indian nations, tribes or pueblos; regional provider
17 networks; and corporations authorized to do business in the
18 state;

19 (3) take administrative action by issuing
20 orders and instructions, not inconsistent with law, to ensure
21 implementation of and compliance with the provisions of law for
22 which the ~~[office]~~ division is responsible and to enforce those
23 orders and instructions by appropriate administrative actions
24 or actions in courts;

25 (4) promulgate, following the procedure in

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1 Subsection E of Section 9-1-5 NMSA 1978, reasonable rules
2 necessary to carry out the duties of the [~~office~~] division; and

3 (5) take all other actions necessary to meet
4 the purposes of the Workforce Development Act.

5 [~~D. The governor shall appoint, with the advice and
6 consent of the senate, a director of the office who shall be
7 the administrative head of the office and exempt from the
8 provisions of the Personnel Act.~~

9 E. ~~The director of the office may, within the
10 limits of available appropriations and pursuant to the
11 provisions of the Personnel Act, employ such technical and
12 administrative staff as are necessary to carry out the duties
13 of the office.]"~~

14 Section 20. Section 50-14-10 NMSA 1978 (being Laws 2005,
15 Chapter 111, Section 11) is amended to read:

16 "50-14-10. [~~OFFICE~~] DIVISION--DUTIES--[LIMITATIONS].--
17 [~~A.~~] The [~~office~~] division shall:

18 [~~(1)~~] A. provide technical, administrative and
19 fiscal agent support to the board;

20 [~~(2)~~] B. develop a unified, comprehensive plan for
21 streamlining and integrating employment training programs,
22 including the consolidation of all employment training
23 programs, into the [~~office~~] division. The [~~office~~] division
24 shall report annually to the governor and the legislature
25 generally the progress and effectiveness of the workforce

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1 development system no later than September 1;

2 [~~3~~] C. develop a performance-based system of
3 accountability for employment training programs, including the
4 board, local boards, one-stop centers and training providers,
5 which system shall include key performance benchmarks to be
6 used to monitor and assess performance;

7 [~~4~~] D. monitor compliance with performance-based
8 and coordination standards, including such standards as the
9 [~~office~~] division establishes by rule, with approval of the
10 board, or that the board has adopted in the state plan, for the
11 state's employment training programs regardless of funding
12 source or the administrative agency that receives the funds.
13 In performing this duty, the [~~office~~] division:

14 (a) may issue subpoenas to appear and
15 answer questions or produce documents;

16 (b) may investigate substantial
17 allegations of improper financial or program activities;

18 (c) shall submit compliance reports to
19 the governor; and

20 (d) shall, with approval of the
21 governor, issue such corrective action orders as are necessary
22 to enforce compliance, including orders that suspend funding
23 for employment training programs or that transfer the programs
24 to another agency;

25 [~~5~~] E. promote the active participation and

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1 partnership with community colleges wherever possible
2 throughout the state, which shall include the use of community
3 colleges in creating career pathways and the use of available
4 partnership incentives with local boards to use community
5 college facilities for one-stop locations, co-location
6 opportunities and specifically designed training programs; and

7 ~~[(6)]~~ F. provide oversight and technical support
8 for local boards to assist them in achieving independence and
9 meeting performance standards while implementing statewide
10 goals and directions.

11 ~~[B. The office shall not compete for a contract to~~
12 ~~provide one-stop services, act as a one-stop operator, accept~~
13 ~~revenues for one-stop contractor services for a local area of~~
14 ~~the state or receive funding from residual set-aside funds~~
15 ~~other than for usual and customary office activities; provided,~~
16 ~~however, that the office may, in its discretion and consistent~~
17 ~~with the state plan, promote and fund the establishment of all~~
18 ~~required and allowable statewide investment activities~~
19 ~~consistent with Section 134 of the federal Workforce Investment~~
20 ~~Act of 1998 and in cooperation with local boards.~~

21 ~~G. Nothing in the Workforce Development Act shall~~
22 ~~be construed to provide the office with authority to administer~~
23 ~~the unemployment compensation program, programs under 29 U.S.C.~~
24 ~~Sections 49 through 49e or a program currently administered by~~
25 ~~the labor department.]"~~

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1 Section 21. Section 50-15-2 NMSA 1978 (being Laws 2005,
2 Chapter 257, Section 2) is amended to read:

3 "50-15-2. DEFINITIONS.--As used in the Day Laborer Act:

4 A. "check cashing service" means a business that
5 for a fee offers to cash checks or other payment instruments or
6 that advertises that it cashes checks or other payment
7 instruments;

8 B. "day labor" means employment that is under a
9 contract between a day labor service agency and a third-party
10 employer, that is occasional or irregular and that is for a
11 limited time period;

12 C. "day labor service agency" means an entity,
13 including a labor broker or labor pool, that provides day
14 laborers to third-party employers and that charges the third-
15 party employer for the service of providing day laborers for
16 employment offered by the employer;

17 D. "day laborer" means a person who contracts for
18 day labor employment with a day labor service agency;

19 E. "department" means the [~~labor~~] workforce
20 solutions department;

21 F. "office worker" means a person employed to
22 perform clerical, secretarial or other semiskilled or skilled
23 work that is predominantly performed in an office setting;

24 G. "payment instrument" means a paycheck, payment
25 voucher or other negotiable instrument from an employer

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1 provided to an employee to pay for hours worked; and

2 H. "third-party employer" means a person that
3 contracts with a day labor service agency for the employment of
4 day laborers."

5 Section 22. Section 51-1-2 NMSA 1978 (being Laws 1979,
6 Chapter 280, Section 11, as amended) is amended to read:

7 "51-1-2. DEFINITIONS.--As used in the Unemployment
8 Compensation Law:

9 A. "department" means the [~~labor~~] workforce
10 solutions department;

11 B. "division" means the [~~employment security~~]
12 workforce transition services division of the [~~labor~~]
13 department, the director of the division or an employee of the
14 division exercising authority lawfully delegated to the
15 employee by the director; and

16 C. "secretary" means the secretary of [~~labor~~]
17 workforce solutions or an employee of the department exercising
18 authority lawfully delegated to the employee by the secretary."

19 Section 23. TEMPORARY PROVISIONS--TRANSFERS.--

20 A. On July 1, 2007, all functions, personnel,
21 appropriations, money, buildings, files, records, furniture,
22 equipment and other property of the labor department, including
23 any divisions of the department, are transferred to the
24 workforce solutions department.

25 B. On July 1, 2007, all functions, personnel,

1 appropriations, money, files, records, furniture, equipment and
2 other property of the office of workforce training and
3 development are transferred to the workforce solutions
4 department.

5 C. On July 1, 2007, all contractual obligations of
6 the labor department, including any divisions of the
7 department, are transferred to the workforce solutions
8 department.

9 D. On July 1, 2007, all contractual obligations of
10 the office of workforce training and development are
11 transferred to the workforce solutions department.

12 E. On July 1, 2007, all statutory references to the
13 labor department or any divisions of the labor department shall
14 be deemed to be references to the workforce solutions
15 department.

16 F. On July 1, 2007, all statutory references to the
17 office of workforce training and development shall be deemed to
18 be references to the workforce solutions department.

19 Section 24. REPEAL.--Sections 9-18-1 through 9-18-15,
20 50-1-1.5, 50-1-9, 50-6-15 and 50-14-16 NMSA 1978 (being Laws
21 1987, Chapter 342, Sections 1 through 14, Laws 1993, Chapter
22 16, Section 2, Laws 1979, Chapter 204, Section 8, Laws 1987,
23 Chapter 333, Section 2, Laws 1963, Chapter 175, Section 4 and
24 Laws 2005, Chapter 111, Section 25, as amended) are repealed.

25 Section 25. EFFECTIVE DATE.--The effective date of the
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1 provisions of this act is July 1, 2007.

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